

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF OHIO  
3                   WESTERN DIVISION

4                   - - -

5                   THOMAS H. McCOOL,  
6                   et al.,

7                   Plaintiffs,

8                   vs.

Case No. 3:11CV678  
Judge James G. Carr

9                   NORFOLK SOUTHERN  
10                  RAILWAY CORPORATION,

11                  Defendant.

12                  - - -

13                  DEPOSITION OF THOMAS H. MCCOOL  
14                  Monday, February 20, 2012

15                  - - -

16                  The deposition of THOMAS H. MCCOOL, a  
17                  Plaintiff herein, called for examination by the  
18                  Defendant under the Federal Rules of Civil  
19                  Procedure, taken before me, Diane M. Stevenson,  
20                  a Registered Merit Reporter, Certified Realtime  
21                  Reporter, and Notary Public in and for the  
22                  state of Ohio, by agreement of counsel, at the  
23                  Donald Harris Law Firm, 158 E. Market Street,  
24                  Suite 302, Sandusky, Ohio, commencing at 9:57  
25                  a.m., the day and date above set forth.

1 APPEARANCES:

2 On behalf of the Plaintiffs:

3 Donald Harris, Esq.  
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9 On behalf of the Defendant:

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17  
18 - - -

19 (No exhibits were marked during this  
20 deposition.)

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22  
23  
24  
25

1 THOMAS H. MCCOOL

2 a Plaintiff herein, called for examination by  
3 the Defendant under the Rules, having been  
4 first duly sworn, as hereinafter certified, was  
5 examined and testified as follows:

6 CROSS-EXAMINATION

7 BY MS. McKEON:

8 Q. Would you state your full name, please.

9 A. Thomas Henry McCool.

10 Q. Mr. McCool, my name is Sheila McKeon, and I am  
11 representing Norfolk Southern in the lawsuit  
12 that you filed regarding the incident on  
13 April 15, 2009, with the horn blowing.

14 A. Yes.

15 Q. I am going to ask you some questions today  
16 about your background, the accident, your  
17 medical treatment, and other things that I may  
18 think are pertinent to this case.

19 If I ask you a question and you don't  
20 understand it, I would like you to tell me, I  
21 will be more than happy to rephrase it for you.  
22 I would prefer that you not guess at what you  
23 think I am asking. All right?

24 A. All right.

25 Q. Any answers that you give me today need to be

1           verbal because Diane is taking down everything  
2           we say. I may understand you if you shrug your  
3           shoulders or shake your head, but she can't get  
4           that down on the record. All right?

5   A.     Yes.

6   Q.     If you need to take a break at any time, let me  
7           know, and we will do that. And also please let  
8           me finish my question before you start  
9           answering it. If we talk over each other, it  
10          is very hard to get a clean record. All right?

11   A.     Okay.

12   Q.     Did you review anything today to prepare for  
13           your deposition?

14   A.     No.

15   Q.     Did you look at any documents, any reports,  
16           anything like that?

17   A.     No.

18   Q.     Did you look at anything, if not today, then  
19           let's say in the days or weeks leading up to  
20           today to prepare you for your deposition?

21   A.     No.

22   Q.     Other than your lawyer, did you speak to  
23           anybody about your deposition today?

24   A.     No.

25   Q.     Have you been deposed before?

1 A. Yes.

2 Q. In what context?

3 A. For Michael Herrera.

4 Q. And who is Michael Herrera?

5 A. He is a machinist at Norfolk Southern.

6 Q. And why did you give a deposition for him?

7 A. For his lawsuit for hearing loss.

8 Q. He filed a lawsuit against Norfolk Southern?

9 A. Yes.

10 Q. Were you a witness in that case?

11 A. Yes.

12 Q. Any other time that you gave a deposition?

13 A. No, ma'am.

14 Q. Did Mr. Herrera's case go to trial, do you  
15 know? Did you have to testify in court?

16 A. I don't know. No, I did not.

17 Q. You just gave a deposition as to what you saw  
18 or what you heard?

19 A. Yes.

20 Q. And was that before or after your incident?

21 A. Before.

22 Q. What is your date of birth?

23 A. May 25th, 1951.

24 Q. And your social security number?

25 A. 281-50-4014.

1 Q. Can you tell me what your home address is?

2 A. 20 Lemmon. That is spelled L E M M O N,  
3 Street, Attica, Ohio 44807.

4 Q. Who lives with you at that address?

5 A. My wife, Connie, and my stepmother, Mary  
6 Singer.

7 Q. How old is Connie?

8 A. 56, I believe.

9 Q. And how long have you been married?

10 A. 39 years.

11 Q. Is this your only marriage?

12 A. Yes.

13 Q. Do you have children?

14 A. One daughter.

15 Q. And how old is she?

16 A. She was born in '74. Let's see, 38. I am  
17 guessing 38.

18 Q. She is out on her own?

19 A. Yes.

20 Q. Are you supporting her in any fashion?

21 A. No.

22 Q. Did you graduate from high school?

23 A. Yes.

24 Q. Can you tell me the school and the year?

25 A. Bucyrus High School, 1969.

1 Q. Did you have any formal education after high  
2 school?

3 A. Ohio Diesel Mechanics School in Cleveland,  
4 Ohio.

5 Q. And did you go there right after high school?

6 A. No, it was '72, I believe.

7 Q. Did you receive some type of degree or  
8 certificate?

9 A. Yes.

10 Q. What did you get?

11 A. It is a diploma for completing the schooling.

12 Q. I am sorry?

13 A. A diploma for completing the schooling.

14 Q. Any other education after high school?

15 A. Yes. I worked at Galion Iron Works. I had  
16 classes there through Marion Technical. I  
17 don't know all of them. I have got  
18 certificates from those, too, diplomas.

19 Q. What was the field of study?

20 A. Electronics, general maintenance.

21 Q. Anyplace else?

22 A. I took a locksmithing course. I don't know the  
23 name of the -- I have a certificate from them.

24 Q. Did you serve in the military?

25 A. No.

1 Q. Did you ever try to serve in the military and  
2 get rejected for any reason?

3 A. No.

4 Q. What is your hire date with the railroad?

5 A. December 14, '98 or '99. I am not sure  
6 exactly.

7 Q. Let's talk about where you worked between high  
8 school and the railroad. I know that is a lot  
9 of years to cover, but do the best you can.  
10 Maybe working backwards would be easier. Is  
11 that easier?

12 A. Yes.

13 Q. All right. Where were you working immediately  
14 before your job with the railroad?

15 A. The name changed so many times, the last it was  
16 Komatsu Dresser.

17 Q. Komatsu Dresser?

18 A. Yes.

19 Q. And they make equipment, some kind of  
20 equipment?

21 A. Right, road equipment.

22 Q. Road equipment?

23 A. Yes.

24 Q. And what did you do there?

25 A. I was a machine operator. I worked in



1 assembly. I was a welder. I worked  
2 maintenance, and I was a laborer.

3 Q. How long did you work there?

4 A. 27 years.

5 Q. It was Komatsu Dresser by the time you left  
6 there?

7 A. When I left it was Komatsu. It was Komatsu  
8 Dresser. It was -- like I said, they changed  
9 the name so many times.

10 Q. And where was the facility located that you  
11 worked at?

12 A. Galion, Ohio.

13 Q. Is it still there, do you know?

14 A. The buildings are still there.

15 Q. Does that mean that the business is no longer  
16 there?

17 A. No.

18 Q. It is no longer in business?

19 A. No. They moved to Tennessee, I guess.

20 Q. Did you leave there because they were moving?

21 A. Yes.

22 Q. You didn't want to make the trip down South?

23 A. They wouldn't let us go.

24 Q. Oh, really?

25 A. Right.

1 Q. Was Komatsu a union shop?

2 A. Yes.

3 Q. What union did you belong to?

4 A. International Association of Machinists and  
5 Aerospace Workers.

6 Q. Did you hold any positions in the union?

7 A. I was a committeeman.

8 Q. For how long of a period of time did you do  
9 that?

10 A. I don't know how long it was. I was appointed  
11 a few times. I don't know.

12 Q. While you worked at Komatsu and its various  
13 name changes, were you ever injured on the job?

14 A. I slipped in oil once and I pulled my groin.

15 Q. Did you ever file a workers' compensation  
16 claim?

17 A. Yes.

18 Q. Was it for that incident or were there others?

19 A. I believe just those two incidents.

20 Q. What was the other incident?

21 A. I slipped in oil in the cab of a crane and I  
22 pulled my back out.

23 Q. This Komatsu facility in Galion, was this a  
24 manufacturing plant?

25 A. Yes.

1 Q. Were you exposed to noise at that facility?

2 A. Yes.

3 Q. Did you have to wear hearing protection when  
4 you worked there?

5 A. Yes.

6 Q. And was that true for your whole 27 years  
7 there, or is that something that developed over  
8 time?

9 A. The hearing protection?

10 Q. Yes.

11 A. I wore hearing protection there, yes.

12 Q. What type of hearing protection did you wear?

13 A. Hearing muffs and hearing -- the insertable  
14 type in your ear.

15 Q. Did they have a program where you would have to  
16 have your hearing tested periodically?

17 A. No, I don't believe so.

18 Q. Do you ever remember having a hearing test that  
19 was arranged by Komatsu?

20 A. No.

21 Q. Do you recall ever having problems with your  
22 hearing of any kind while you worked at  
23 Komatsu?

24 A. No. Would that be hearing infections,  
25 earaches, or sinus like? I guess I am --

1 Q. Okay. Well, I can rephrase the question. Did  
2 you ever have a problem when you worked at  
3 Komatsu with ringing in your ears --

4 A. No.

5 Q. -- or anything like that?

6 A. No.

7 Q. Or a perceived hearing loss of any kind?

8 A. No.

9 MR. HARRIS: The water was for  
10 your cough.

11 MS. McKEON: I appreciate that.  
12 Thank you.

13 Q. I know you mentioned the ear infections. Did  
14 you have a doctor that you would see for ear  
15 problems of that type?

16 A. My family doctor, just an earache every once in  
17 a while.

18 Q. Who is currently your family doctor?

19 A. Michael Johnson.

20 Q. And where is Dr. Johnson located?

21 A. Bucyrus.

22 Q. And how long has he been your family doctor?

23 A. A long time. I don't know exactly how long.

24 Q. Would he have been your family doctor when you  
25 were working at Komatsu?

1 A. Yes.

2 Q. Before this incident at Norfolk Southern that  
3 we are here about today, did you ever see any  
4 type of ear specialist, an ear, nose and throat  
5 doctor, anybody like that, to deal with ear  
6 problems or hearing problems?

7 A. I believe once with a hearing infection.

8 Q. Do you remember who that was?

9 A. No, I don't.

10 Q. Is that somebody that Dr. Johnson may have sent  
11 you to?

12 A. Yes.

13 Q. Do you recall where you worked before Komatsu?

14 A. Bucyrus Diesel.

15 Q. And what did you do there?

16 A. Mechanic.

17 Q. And during what period of time did you work  
18 there?

19 A. After high school until '75, maybe. I worked  
20 there part-time while I worked at Komatsu or  
21 Galion Iron Works.

22 Q. So you were working at Bucyrus -- I am sorry,  
23 what is Galion Iron Works?

24 A. That was the original name. It went to Galion  
25 Manufacturing. It went to -- it finally ended

1 up as Komatsu.

2 Q. They got bought by Komatsu; is that it?

3 A. I don't understand how it came about, but I  
4 know the names changed.

5 Q. So while you were at -- you started at Bucyrus  
6 Diesel after high school, and then took a job  
7 at Galion Iron Works, which ultimately became  
8 Komatsu, and you were still working part-time  
9 at Bucyrus Diesel?

10 A. Yes.

11 Q. Any other place that you worked between high  
12 school and starting with the railroad?

13 A. No.

14 Q. During your time at Bucyrus Diesel, were you  
15 ever injured on the job?

16 A. No.

17 Q. Were you exposed to loud noise when you worked  
18 there?

19 A. No.

20 Q. Was that a job where you had to wear hearing  
21 protection?

22 A. I had hearing protection, but I really didn't  
23 need it. It was quiet. It was just a garage.

24 Q. Was that something that the company provided to  
25 you, the hearing protection?

1 A. No.

2 Q. Did you wear it when you worked, or you just  
3 had it but didn't need it?

4 A. I had it when I needed it.

5 Q. How soon after leaving Komatsu did you start  
6 with Norfolk Southern?

7 A. I took a leave of absence from Komatsu to go to  
8 work for the railroad. It was an arranged deal  
9 with the company and the union.

10 Q. Well, how did that work?

11 A. The company was supposed to close down the  
12 first of the year or first of December, I am  
13 not sure of the date. But we were allowed --  
14 if we had another job, we were allowed a leave  
15 of absence to go to the other job so we didn't  
16 lose our severance pay.

17 Q. How did you find out about the job at the  
18 railroad?

19 A. I heard there was a hiring session in Sandusky  
20 and I went to it.

21 Q. And did you have to take some type of a test?

22 A. Yes.

23 Q. Did you pass the test?

24 A. I must have, I am working there.

25 Q. Well, some people take it more than once.

1 A. No, I passed, yes.

2 Q. I am assuming then they sent you for a medical  
3 exam?

4 A. Yes.

5 Q. And was part of that a hearing exam?

6 A. Yes.

7 Q. Was there anything that came up at your medical  
8 exam that the railroad, because of which the  
9 railroad sent you for further examination --

10 A. No.

11 Q. -- anything that was questionable to them?

12 A. No.

13 Q. And the job that you were hired for was what?

14 A. Machinist.

15 Q. And where? Where would you be headquartered?

16 A. Bellevue.

17 Q. Have you been at Bellevue since you hired out  
18 with the railroad?

19 A. Yes.

20 Q. And have you been a machinist since you hired  
21 out?

22 A. Yes.

23 Q. Did you ever hold any other positions?

24 A. No.

25 Q. And as a machinist, are you working on the



1 locomotives?

2 A. Yes.

3 Q. You work right in the shop there, in the  
4 locomotive shop?

5 A. Yes.

6 Q. Is that where you have always worked since you  
7 have been at Bellevue?

8 A. Yes. But there is the pit, we work outside in  
9 the pit, but yes, it is Bellevue.

10 Q. What union do you belong to?

11 A. Just the International Association of  
12 Machinists.

13 Q. What do you mean "just"?

14 A. That is the only union I belong to.

15 Q. Oh, okay. Do you hold any positions in the  
16 union?

17 A. No.

18 Q. Have you ever?

19 A. I was local chairman for three years.

20 Q. And when was that?

21 A. I don't know the dates.

22 Q. You are still working, correct?

23 A. Yes.

24 Q. And who is your immediate supervisor?

25 A. I have two of them because of days off.

1 Richard Baker and Russ Sweitzer.

2 Q. What are their titles?

3 A. Mechanical supervisor.

4 Q. Are they both mechanical supervisors?

5 A. Yes.

6 Q. Who is the head of the shop there?

7 A. Ryan Stea (phonetic).

8 Q. Ryan?

9 A. Stea. I am not sure -- S T E -- I really don't  
10 know how to spell his name. Stea.

11 Q. At the time of the incident that we are here  
12 about on April 15 of 2009, were Baker and  
13 Sweitzer your supervisors?

14 A. No.

15 Q. Who were your supervisors then?

16 A. It was Mike Gay.

17 Q. Just Mike Gay?

18 A. Yes.

19 Q. And who was the shop superintendent?

20 A. Jason Eddy.

21 Q. How many tricks do they run at that shop?

22 A. Three.

23 Q. Was that the same back in 2009?

24 A. Yes.

25 Q. And which trick were you working?

1 A. Third shift.

2 Q. Which would be what times?

3 A. 11:00 to 7:00.

4 Q. 11:00 p.m. to 7:00 a.m.?

5 A. Correct.

6 Q. Are you still working third trick?

7 A. Yes.

8 Q. And has that been the same since the accident,  
9 you have worked third shift?

10 A. Yes.

11 Q. Do you have -- is it five days a week that you  
12 work?

13 A. Yes.

14 Q. And what are your rest days?

15 A. Sunday and Monday.

16 Q. And was that the same back in 2009?

17 A. I believe at the time I had Wednesday, Thursday  
18 off.

19 Q. Do they provide hearing protection for you to  
20 wear on the job when you are in the shop?

21 A. Yes.

22 Q. What type of protection do you use?

23 A. The corded inserts.

24 Q. Corded?

25 A. Yes, there is a cord between the two so you

1 don't lose them.

2 Q. Was that the same thing that you were using in  
3 2009?

4 A. Yes.

5 Q. What is the rule in the shop about the use of  
6 hearing protection?

7 A. There are signs that you have to wear hearing  
8 protection past the sign. If you are in the  
9 office or cafeteria, you don't need to wear  
10 your hearing protection.

11 Q. So do you have to wear hearing protection,  
12 then, basically the whole time that you are  
13 working around the equipment?

14 A. Yes.

15 Q. Do they have any type of training sessions on  
16 the use of hearing protection --

17 A. Yes.

18 Q. -- that type of thing?

19 Okay. Can you tell me about those?

20 A. Hearing tests, they have a video that shows how  
21 to put your hearing protection on and  
22 everything.

23 Q. Do you have annual hearing tests?

24 A. Yes.

25 Q. And have you been getting those tests done for

1 the time you have been there?

2 A. I believe so. I am not -- I can't remember  
3 every test, yes, but we have had a lot of  
4 hearing tests.

5 Q. When you started back in 1998 or 1999, did they  
6 have those hearing tests in place?

7 A. I believe so. I don't remember.

8 Q. Do you have to go somewhere for the test, or do  
9 they bring a van around where they test you?

10 A. There was a mobile van that we go to.

11 Q. Does it come onto the property and they test  
12 you there?

13 A. Yes, yes.

14 Q. You said that you use the corded inserts. Are  
15 there other types of hearing protection that  
16 you can use if you want them?

17 A. Yes.

18 Q. And have you ever used anything else?

19 A. At one time I used the one with the fiberglass  
20 arm. It is a U-shaped hearing protection that  
21 holds them in. After awhile they get painful.

22 Q. Did you ever make any complaints to anyone in  
23 supervision about the hearing protection that  
24 you were provided?

25 A. No.

1 Q. You know, either that you didn't think it was  
2 adequate, that it didn't work well, or  
3 anything?

4 A. No.

5 Q. If not to supervision, did you ever make any  
6 complaints to anyone about the hearing  
7 protection that was available?

8 A. No.

9 Q. When you have your hearing tests, the annual  
10 hearing tests, do you get the results?

11 A. Yes.

12 Q. They send you the results?

13 A. It is printed out and they hand it to you.

14 Q. Do you ever get any follow-up from the  
15 railroad's medical department, you know, about  
16 the results of your tests?

17 A. I believe the one year they asked me to go to  
18 see a doctor about my hearing.

19 Q. And did you do that?

20 A. Yes.

21 Q. Do you recall when that was?

22 A. 2010.

23 Q. So this would have been after the incident --

24 A. Yes.

25 Q. -- back in April of 2009?

1 A. Yes.

2 Q. How about before April 15 of 2009, were you  
3 ever told or given any documents to indicate  
4 that your annual hearing tests showed a change  
5 in your hearing in any fashion?

6 A. No.

7 Q. Did you ever have, before April 15 of 2009, a  
8 problem with ringing in your ears or anything  
9 like that?

10 A. No.

11 Q. Do you know who the doctor was that you saw in  
12 2010?

13 A. I believe it was Bailey in Marion.

14 Q. So up until April 15 of 2009, you didn't see  
15 anybody, any doctors, for hearing issues other  
16 than Dr. Johnson?

17 A. The one that Dr. Johnson sent me to, I don't  
18 know his name.

19 Q. On the day of the accident or the incident, you  
20 were working third shift?

21 A. Yes.

22 Q. And do you recall what your tasks were that  
23 shift?

24 A. My assignment was to get oil samples off of the  
25 unit on the wash rack.

1 Q. So there was an engine in the wash rack?

2 A. Yes.

3 Q. And you had to take an oil sample?

4 A. Yes.

5 Q. And what was going to be done to the engine? I  
6 guess it was going to be washed at some point?

7 A. Yes, it was going to be washed. I just was  
8 there to take the oil samples.

9 Q. Was this the first engine you had worked on on  
10 that shift?

11 A. No.

12 Q. About what time did this incident happen?

13 A. I don't recall.

14 Q. Do you recall what things you had done before  
15 this happened?

16 A. I had gotten other oil samples.

17 Q. From other engines?

18 A. Yes.

19 Q. What do you need to do to get an oil sample?

20 A. There are three bottles for the samples. One  
21 is for oil samples, one is for air compressor  
22 oil, and one for cooling water.

23 There is a quick disconnect that we put a  
24 fitting onto, a valve, that we draw the samples  
25 with.



1 Q. Do you have to take the samples from different  
2 locations on the engine?

3 A. Yes.

4 Q. Were you in the process of taking the oil  
5 sample when the horn went off?

6 A. Yes.

7 Q. And where is the valve that you need to use to  
8 take the oil sample located?

9 A. On the front of the locomotive engine.

10 Q. Outside or inside?

11 A. It is inside the car body.

12 Q. Is it inside the cab?

13 A. No.

14 Q. So explain to me when you say "It is inside the  
15 car body," how do you get to it?

16 A. Well, you open the car body door and just reach  
17 in and get the sample.

18 Q. Well, where is the -- you know how these  
19 engines work better than I. Where are the car  
20 body doors?

21 A. They are just doors that cover the engine to  
22 keep the elements out. They are along the side  
23 of the engine.

24 Q. Do you have to get into the engine to do this?

25 A. No, you can get them from the walkway.

1 Q. So when the engine is in the wash rack, are  
2 there walkways on either side?

3 A. Yes.

4 Q. The wash rack, is it open? Is it enclosed in  
5 some fashion?

6 A. It is enclosed.

7 Q. And how many engines can fit at one time in the  
8 wash rack?

9 A. One.

10 Q. So there was only one engine in there?

11 A. Yes.

12 Q. Can you describe the wash rack for me, the  
13 building?

14 A. It is just an enclosed building around the  
15 locomotive with -- there is an exhaust fan for  
16 when the engine is running to remove the  
17 exhaust fumes.

18 On the north wall it is concrete block.  
19 And the other walls are fiberglass with rubber  
20 on them.

21 Q. Well, I am assuming that somebody can drive  
22 that engine right into the rack; is that  
23 correct?

24 A. Yes.

25 Q. The track runs completely through the wash

1 rack?

2 A. Yes.

3 Q. So when it is done, somebody can take it out  
4 the other end?

5 A. Yes.

6 Q. So there are doors on either end --

7 A. Yes.

8 Q. -- or is it just permanently open?

9 A. There are doors on both ends.

10 Q. Were the doors open in the wash rack at the  
11 time this happened?

12 A. No, they were closed.

13 Q. On both ends?

14 A. Yes.

15 Q. Is there a reason that they get closed?

16 A. To contain the fumes from the engine running.

17 Q. Why would you want to contain the fumes?

18 A. So the exhaust fan can draw them out.

19 Q. Who were you working with?

20 A. I was working by myself.

21 Q. Were there other machinists who were on duty  
22 who were also working on that engine but  
23 perhaps doing something other than taking the  
24 samples?

25 A. There was a machinist in the cab, his name was

1 Jim Kear. And there is an electrician, Brian  
2 Filsinger.

3 Q. Brian?

4 A. Filsinger.

5 Q. Anybody else who was on the engine at the time  
6 this happened?

7 A. No.

8 Q. Anybody who was out on the walkway?

9 A. No.

10 Q. Which direction was that engine facing when it  
11 was in the wash rack?

12 A. The cab was east.

13 Q. And what side of the engine were you on?

14 A. I was on the left side.

15 Q. The left side if you are facing the cab, facing  
16 the front of the cab or --

17 A. Yes.

18 Q. And I am assuming that there is an external  
19 horn mounted somewhere on the locomotive?

20 A. Yes, on top of the car body.

21 Q. Do you know what type of engine this was?

22 A. It was a General Electric.

23 Q. Do you know what series it was?

24 A. It is Evolution series, but I am not sure of  
25 the --

1 Q. Were you in the process of taking the oil  
2 sample when the horn went off, or had you  
3 already done that? What were you doing?

4 A. I was waiting for the engine to start.

5 Q. You hadn't taken the sample yet?

6 A. No.

7 Q. And does the engine need to be running for you  
8 to take the sample?

9 A. Yes.

10 Q. And was that the other machinist who was in the  
11 cab, was he the one who was going to start the  
12 engine?

13 A. No. It was Brian Filsinger started the engine.

14 Q. Do you have your hearing protection in?

15 A. Yes.

16 Q. And so where were you waiting while you were  
17 waiting for the engine?

18 A. At the front of the engine, the locomotive  
19 engine. I had the door open.

20 Q. The door to the cab body?

21 A. Yes, the car body, yes.

22 Q. Car body?

23 A. Yes, so I could get the sample.

24 Q. And had the engine started up?

25 A. No.

1 Q. Were you standing on the walkway?

2 A. Yes.

3 Q. And you would have been on the left side of the  
4 engine?

5 A. Yes.

6 Q. With the door open, waiting?

7 A. Yes.

8 Q. And so then what happened?

9 A. The horn blew. And I am not sure if I got the  
10 sample then or if I went to the cab to see if  
11 everything was all right. The supervisor came  
12 up, he asked if I was all right. That is about  
13 all I remember.

14 Q. Well, am I correct in assuming that the horns  
15 are not supposed to go off in the wash rack?

16 A. Yes.

17 Q. Is there some type of rule about that?

18 A. Yes.

19 Q. What is the rule?

20 A. They are supposed to have a horn block on them  
21 so that they can't be activated.

22 Q. And who puts the horn block on?

23 A. Whoever brings the locomotive into the shop.

24 Q. Do you know if there was a horn block on this  
25 engine?

1 A. Yes.

2 Q. Yes, there was?

3 A. Yes, there was.

4 Q. When you say "whoever brings it in," is it a  
5 train crew that brings it in or do the guys  
6 that work in the shop bring it in?

7 A. The guys that work in the shop.

8 Q. Is that you? Would you have brought it in?

9 A. I could have, but I did not. I bring units in  
10 the shop.

11 Q. Do you know who brought this one in?

12 A. No, I don't.

13 Q. Had you worked on this unit the day before?

14 A. No.

15 Q. So this was a new unit that was brought in for  
16 you to work on on the third shift?

17 A. Yes.

18 Q. Do you know, was the engine brought in on the  
19 third shift, or was it already there when you  
20 got there to start your day?

21 A. It was already there.

22 Q. And do you know if there had been work done on  
23 it before you got there?

24 A. Yes, it went through the test line.

25 Q. Is there some procedure for checking to make

1           sure there is a horn block on the engine before  
2           work starts on it when it is in the wash rack?

3   A.     To my knowledge, no.

4   Q.     Had you been in the cab of that engine at all  
5           before that horn went off?

6   A.     Yes.

7   Q.     What had you done in the cab of the engine?

8   A.     I applied my blue flag for blue flag  
9           protection.

10   Q.    And how do you apply that?

11   A.    You just put the tag over the throttle.

12   Q.    And at that time were you able to notice  
13          whether there was a horn block on?

14   A.    Yes.

15   Q.    And did you see a horn block?

16   A.    Yes.

17   Q.    Did it look like it was on properly?

18   A.    It was on.

19   Q.    Okay. Well, tell me what the horn block looks  
20          like.

21   A.    It is a round piece of PVC pipe with a set  
22          screw in it.

23   Q.    When you say a *set screw*, do you mean something  
24          that screws into the pipe that clamps it to --

25   A.    Yes.



1 Q. -- the horn mechanism?

2 A. Yes.

3 Q. And how is the horn operated in that particular  
4 engine?

5 A. It is a joystick that you pull.

6 Q. How long is it or big?

7 A. About three to four inches.

8 Q. And does the horn block fit right over it?

9 A. Yes.

10 Q. And does it connect to anything else? I guess  
11 I am wondering how the block stops it from  
12 moving.

13 A. The thumb screw just screws into the collar on  
14 the base.

15 Q. And when you said this is a joystick, so is the  
16 horn operated by moving the lever or the  
17 joystick?

18 A. Yes, yes.

19 Q. Frontward or backwards?

20 A. I believe you can move it in any direction.

21 Q. And when this horn lock is on, it prevents it  
22 -- it is supposed to prevent it from moving?

23 A. Supposed to, yes.

24 Q. I just want to understand how it works.

25 So you were in the cab putting on the blue

1 flag protection and you saw the horn block,  
2 correct?

3 A. Yes.

4 Q. I kind of got the feeling from your answer that  
5 it was on, but did it look like it was not on  
6 properly?

7 A. That type of horn block fits loose.

8 Q. What does that mean?

9 A. It is not really secure. It is just a cover  
10 around the joystick.

11 Q. If the set screw is put in properly, are you  
12 saying it still doesn't fit right?

13 A. Yes.

14 Q. Is there another type of horn block that you  
15 can use?

16 A. At the time, no.

17 Q. Have there been complaints about those horn  
18 blocks?

19 A. I believe so.

20 Q. Had you ever made a complaint about the horn  
21 block?

22 A. No.

23 Q. Have you ever been in the shop when there was  
24 an unintended -- when the horn was activated  
25 unintentionally?

1 A. Yes.

2 Q. And were you ever on the engine or on the  
3 walkway at the time?

4 A. Yes.

5 Q. When did that happen?

6 A. Well, just last Saturday night or Saturday  
7 night before last there was a horn activation  
8 in the shop.

9 Q. Well, let's talk before April 15 of 2009.

10 A. Before? The one with Mike Herrera.

11 Q. And what happened in Herrera's situation?

12 A. I was putting a horn block on the locomotive we  
13 just brought in, and I was sliding it over the  
14 button and it blew.

15 Q. And was this the same type of horn block or a  
16 different type?

17 A. No, this was a different type.

18 Q. It sounds like it might have been because you  
19 said this was a button?

20 A. Yes.

21 Q. And so why did the horn activate that time?

22 A. The set screw hit the button and activated it.

23 Q. And you were the one putting it on?

24 A. Yes.

25 Q. Any other times that you could recall before

1 April 15, 2009, that you were present when the  
2 horn activated?

3 A. They brought one in the test line and they blew  
4 the horn putting the horn block on on that one.  
5 I don't know the date.

6 Q. So this one with Herrera, you would have been  
7 right there in the cab when the horn blew,  
8 correct?

9 A. Yes.

10 Q. What happened as a result of that incident?  
11 Did you have -- you know, were you injured?

12 A. I was in the cab, the doors were closed.

13 Q. So is that a no?

14 A. No.

15 MR. HARRIS: Or yes, that is a  
16 no?

17 Q. You were not injured; is what you are trying to  
18 tell me?

19 A. Correct.

20 Q. Was Mr. Herrera outside the engine?

21 A. Yes.

22 Q. Was there some type of investigation done?

23 A. Yes.

24 Q. And what happened? I mean, what was the result  
25 of that? Were you disciplined in any way?

1 A. No.

2 Q. Did they hold a company hearing?

3 A. No.

4 Q. So when you saw the horn block, did you say  
5 anything to anybody that you thought that it  
6 might not be affixed properly or that it  
7 wouldn't prevent the horn from sounding?

8 A. No.

9 Q. After you put your blue flag protection on,  
10 what happened then?

11 A. I asked Electrician Filsinger to start the  
12 engine while I walked to the side of the  
13 locomotive.

14 Q. Was there any discussion among the guys who  
15 were there, you and Filsinger and Kear about  
16 the horn block?

17 A. No.

18 Q. So you went out onto the walkway, opened the  
19 door to the car body, and waited for the engine  
20 to start?

21 A. Yes.

22 Q. And then the horn went off?

23 A. Yes.

24 Q. And tell me about the horn going off. Was it  
25 just one blast, or what happened?

1 A. Yes, it was one blast.

2 Q. Do you know about how long it lasted?

3 A. No, I don't.

4 Q. After the horn went off, what did you do?

5 A. I went up into the cab to, you know, see what  
6 was going on.

7 Q. And what discussion did you have with the guys  
8 in the cab?

9 A. After he pushed the button to start the  
10 locomotive, he picked up a laptop computer and  
11 went to sit down at the controls and, from what  
12 I was told, when he turned he hit the horn  
13 button with the computer and activated it.

14 Q. And who did that, Filsinger?

15 A. Yes.

16 Q. So that the guys in the cab told you what  
17 happened?

18 A. Yes.

19 Q. And what else happened after that, then?

20 A. The supervisor was there, he came up and asked  
21 if everybody was all right.

22 Q. And what did everybody tell him?

23 A. Yes.

24 Q. I mean, did you notice any problems after that  
25 horn blast?

1 A. Well, the engine was running and I had my  
2 hearing protection in. I didn't notice  
3 anything then.

4 Q. Who was the supervisor that came to check on  
5 everybody?

6 A. Mike Gay.

7 Q. So he asked if everyone was okay. Everybody  
8 said yes. Did he do anything further at that  
9 point?

10 A. No.

11 Q. Did they do anything with the horn block?

12 A. No.

13 Q. Did you continue working?

14 A. Yes.

15 Q. And did you work your entire shift?

16 A. Yes.

17 Q. Were you noticing any problems as your shift  
18 progressed?

19 A. When I went to dinner I took my hearing  
20 protection out, and that is when I noticed the  
21 ringing and change in hearing.

22 Q. Tell me what it was, exactly, that you noticed.

23 A. The ringing in my ears.

24 Q. In both ears?

25 A. Yes.

1 Q. What else did you notice?

2 A. That is about it.

3 Q. Well, you said earlier that there was a ringing  
4 in your ears and a change in your hearing.

5 A. Yeah, there was a change in my hearing, it  
6 didn't -- I don't know how to describe it. It  
7 is like a different tone in the ringing.

8 Q. What do you mean a different tone in the  
9 ringing?

10 A. It was a different tone in my hearing, and the  
11 ringing.

12 Q. Could you hear people who were talking to you?

13 A. Yes.

14 Q. So what did you do at that point?

15 A. After I ate, I went down to the office and  
16 talked to the supervisor about it.

17 Q. This is Mr. Gay?

18 A. Yes.

19 Q. And what discussion did you have with Mr. Gay?

20 A. I just told him about it and filled out the --  
21 started filling out the paperwork.

22 Q. Would this be an injury report?

23 A. Yes.

24 Q. Did Mr. Gay ask if you needed medical  
25 attention?



1 A. Yes.

2 Q. And what did you tell him?

3 A. No.

4 Q. Did you go back to work?

5 A. Yes.

6 Q. And do you know what, if anything, Mr. Gay did?

7 A. I don't know. He filed the paperwork, I guess.  
8 There was another gentleman involved.

9 Q. Do you know who that was?

10 A. Leonard DiSalvo.

11 Q. When you say "another gentleman involved," what  
12 was his involvement?

13 A. He was outside of the wash rack right beside  
14 the locomotive when the horn went off, and he  
15 filled out paperwork, too.

16 Q. Was he near you?

17 A. He was on the other side of the locomotive on  
18 the other side of the wall.

19 Q. The other side of the -- okay. So he wasn't in  
20 the wash rack?

21 A. No.

22 Q. What was he doing, do you know?

23 A. Working on a locomotive.

24 Q. And then you finished out your day, finished  
25 out the shift?

1 A. Yes.

2 Q. Have you been working ever since?

3 A. Yes.

4 Q. Did you have any more discussion with Mr. Gay  
5 or anyone else in supervision about this  
6 incident?

7 A. Everyone was asking if I was all right.

8 Q. Was there any type of investigation done that  
9 you know about? Did they take statements from  
10 everybody who was there?

11 A. Yes, yes.

12 Q. And when was that done?

13 A. Almost right away afterwards.

14 Q. Before you filled out the paperwork?

15 A. After, after I filled out the paperwork.

16 Q. Was it Mr. Gay who got statements from the  
17 other gentlemen who were working on the engine?

18 A. To the best of my knowledge, yes.

19 Q. And did you give a statement?

20 A. Yes.

21 Q. Was it a handwritten statement?

22 A. Yes.

23 Q. Did you give a recorded statement to anyone?

24 A. No.

25 Q. Did you eventually get some type of medical

1           attention?

2   A.       Yes.

3   Q.       And when was that and who did you see?

4   A.       I don't know the date. It was Dr. Bailey. I  
5           first went to Dr. Johnson, and then he referred  
6           me to Dr. Bailey.

7   Q.       What did Dr. Bailey do for you?

8   A.       He examined my ears.

9   Q.       What did he tell you?

10   A.      He didn't see any damage.

11   Q.      Was this within a couple of days --

12   A.      Yes.

13   Q.      -- or weeks of the incident?

14   A.      I believe. I don't know the exact timeline.

15   Q.      Within a few days, you think?

16   A.      Yes.

17   Q.      And were you still having the same problems at  
18           that time when you saw Dr. Bailey that you were  
19           having immediately after the accident?

20   A.      Yes.

21   Q.      Did Dr. Bailey give you any type of treatment  
22           suggestions or recommendations?

23   A.      No.

24   Q.      Did he tell you that you could go back to work  
25           or could keep working?

- 1 A. I don't believe so.
- 2 Q. Did he tell you not to work?
- 3 A. No.
- 4 Q. How many times did you see Dr. Bailey?
- 5 A. Just that once.
- 6 Q. Did you have treatment with anybody else?
- 7 A. Another doctor in Marion, an audiologist. I
- 8 believe it was Werner. I am not sure of the
- 9 name.
- 10 Q. Winger?
- 11 A. That might be it. Yes.
- 12 Q. Roger Winger?
- 13 A. Yes.
- 14 Q. He is an audiologist?
- 15 A. Yes.
- 16 Q. And how did you -- were you referred to him by
- 17 Dr. Johnson?
- 18 A. Yes.
- 19 Q. And what did Dr. Winger do?
- 20 A. Hearing test, examined my ears.
- 21 Q. And what did he tell you?
- 22 A. I had a hearing loss. He said that there is
- 23 nothing to be done for tinnitus.
- 24 Q. What else did he tell you?
- 25 A. He said he could sell me hearing aids, but he

1           didn't think at the time it was needed.

2   Q.       And how many times did you see him?

3   A.       Just the once.

4   Q.       Is there anybody else you saw as a result of  
5           this incident?

6   A.       I stopped at places like the one in Wal-Mart to  
7           see if there was anything they could do;  
8           Belltone; and there was one over in the mall at  
9           Sears, I can't think of the name of it. I have  
10          been various places. Every time I see one I  
11          will go in and see if they have anything.

12   Q.       Do you get tested at any of these places?

13   A.       Well, they say there is really nothing they can  
14          do for it. It is --

15   Q.       I guess I am just trying to figure out if there  
16          are records of your visits to any of these  
17          places, or is it more you just going in and  
18          discussing the situation with them?

19   A.       Just looking for something that might help.

20   Q.       So any of these places you have been to you  
21          haven't had any hearing tests?

22   A.       No.

23   Q.       Is there anyone else you have seen? You told  
24          me you have seen Dr. Johnson, he sent you to  
25          Dr. Bailey, who you saw one time; to

1 Dr. Winger, who you saw one time. Is there  
2 anyone else?

3 A. No.

4 Q. Are you still having ringing in your ears?

5 A. Yes.

6 Q. Has it changed at all since the day of the  
7 incident?

8 A. I don't believe.

9 Q. Is it in both ears?

10 A. Yes.

11 Q. Is it the same in both or worse in one?

12 A. I think it is a little worse in my left ear.

13 Q. Had you ever had ringing in your ears before  
14 April 15 of 2009?

15 A. No.

16 Q. Have you seen or noticed a change in your  
17 hearing, aside from the ringing?

18 A. Yes.

19 Q. Tell me about that.

20 A. I have to turn the TV up to hear it. Noise in  
21 crowds, it is hard to understand people. I am  
22 always asking people to repeat stuff.

23 Q. Did you ever have any -- did you ever notice  
24 any change in your hearing before April 15,  
25 2009?

1 A. No.

2 Q. You mentioned that in 2010 when you had your  
3 annual company hearing test that they sent you  
4 to see somebody in Marion, I thought you said.  
5 Is that what you said, or was that Dr. --

6 A. I thought -- I don't really remember. I think  
7 they asked me to go to see Bailey, I am not  
8 sure, or to see a doctor. I don't know. I  
9 don't remember.

10 Q. Okay, I found my notes. You told me that in  
11 2010 you had a company hearing test and you  
12 were asked to go see another doctor and you saw  
13 Dr. Bailey.

14 A. I believe. I am not 100 percent sure.

15 Q. Did you tell any of your supervisors that you  
16 were having ongoing problems with your hearing  
17 as a result of what happened in April 2009?

18 A. Jason Eddy.

19 Q. And what did you tell Mr. Eddy?

20 A. That I was going to see another doctor, that  
21 would be Dr. Werner -- Warner.

22 Q. Winger?

23 A. Winger.

24 Q. Was there any follow-up after that?

25 A. No.

1 Q. Did anybody, any of your doctors, recommend  
2 that you wear a different type of hearing  
3 protection?

4 A. No.

5 Q. Did they, any of them, recommend that you not  
6 work in a noisy place?

7 A. No.

8 Q. Has anybody recommended any further treatment  
9 of any kind?

10 A. No.

11 Q. Do you do anything when you are off work, is  
12 there anything that you do to deal with the  
13 hearing loss or the ringing in your ears?

14 A. When I sleep I have a Sleep Mate that makes  
15 noise in the background that helps me sleep.

16 Q. And where did you get that?

17 A. JCPenney.

18 Q. Was that suggested by any of your doctors?

19 A. No. A paramedic friend said that is what he  
20 uses.

21 Q. Does that mask the ringing sound?

22 A. Yes, it helps.

23 Q. Anything else that you do?

24 A. No.

25 (Thereupon, a short recess was taken.)



1 Q. Do you have any appointments set up to see any  
2 other doctors or specialists about your  
3 hearing?

4 A. No.

5 Q. How often do you see Dr. Johnson about your  
6 hearing issues?

7 A. Dr. Johnson is our family doctor. I ask him  
8 when I go in for other illnesses if there is  
9 anything.

10 Q. Did you lose any time from work as a result of  
11 this incident?

12 A. No.

13 Q. How about medical bills, do you have medical  
14 bills as a result?

15 A. No.

16 Q. How about your visits to Dr. Winger and Bailey?  
17 Let me ask you, do you have any medical  
18 expenses that you believe were incurred as a  
19 result of this incident on April 15 of 2009?

20 A. No.

21 Q. Do you have any hobbies at home where you are  
22 exposed to loud noise, woodworking or anything  
23 like that?

24 A. No.

25 Q. Do you hunt?

1 A. No.

2 Q. Do you operate a boat or a motorcycle?

3 A. No.

4 Q. Do you have any hobbies that you feel that you  
5 can no longer do because of the problems with  
6 your ears?

7 A. No.

8 Q. What do you do in your spare time, if you have  
9 any?

10 A. I watch TV and sleep.

11 Q. Anything that you have had to give up because  
12 of the ringing in your ears or the hearing  
13 loss?

14 A. No.

15 Q. Has the hearing problems caused any kind of a  
16 problem within your relationship with your wife  
17 or your family?

18 A. She gets aggravated when the TV is turned up  
19 too loud. I don't respond to her when she  
20 talks to me sometimes, I don't hear her.

21 Q. Anything else?

22 A. No.

23 Q. Does the ringing in your ears or the hearing  
24 loss affect your ability to do your job in any  
25 way?

1 A. No.

2 Q. Do they still use those same type of horn  
3 blocks?

4 A. No.

5 Q. What do they use now?

6 A. They have come up with a collar that screws on  
7 the base of the horn switch, and then they have  
8 a PVC pipe that screws onto that collar, it is  
9 a threaded collar.

10 Q. There is a collar that screws onto the horn  
11 switch?

12 A. Correct.

13 Q. And then what?

14 A. The PVC pipe screws onto that collar.

15 Q. Is there a safety committee in the locomotive  
16 shop?

17 A. Yes.

18 Q. Are you a member of the safety committee?

19 A. No.

20 Q. Have you ever been?

21 A. No.

22 Q. Was there ever any discussion that you recall  
23 with the safety committee about the horn blocks  
24 that were used before April 15 of 2009?

25 A. Not to my knowledge.

1 Q. Did you ever make a complaint to anyone on the  
2 safety committee about the fact that you  
3 thought the horn blocks didn't work properly?

4 A. No.

5 Q. During your time with Norfolk Southern, have  
6 you had any other on-the-job injuries?

7 A. No.

8 Q. Did you have any other injuries, perhaps off  
9 the job, that caused to you lose time from  
10 work?

11 A. No.

12 Q. Have you ever been involved in any type of an  
13 accident where you had to seek medical  
14 attention?

15 A. No.

16 Q. Do you have any type of medical condition or  
17 illness that you get treatment for?

18 A. No.

19 Q. Do you have high blood pressure or heart  
20 problems?

21 A. No, ma'am.

22 Q. Are you diabetic?

23 A. No.

24 Q. Do you take any type of medication currently?

25 A. I take vitamin supplements and allergy pills.

1 Q. Anything else?

2 A. No.

3 Q. Other than on the job, did you ever have an  
4 incident where you were exposed to a sudden  
5 loud noise?

6 A. Not to my knowledge, no.

7 Q. Have you spoken to any possible expert witness  
8 or sound level testing type expert about this  
9 incident?

10 A. No.

11 Q. I think you said you gave a written statement  
12 to your supervisor but not a recorded statement  
13 to anyone; is that right?

14 A. That's right.

15 MS. McKEON: Okay. I don't  
16 have any other questions.

17 MR. HARRIS: None for myself.

18 MS. McKEON: Oh, I do want to  
19 say, though, I still don't have those discovery  
20 responses, so I am going to reserve my right to  
21 recall him if there is anything in there that I  
22 think needs to be pursued further.

23 MR. HARRIS: Consider it done.

24 MS. McKEON: What do you want  
25 to do about signature?

1                   MR. HARRIS:           We want to review  
2           it prior to releasing it.   So you want to  
3           reserve the right to sign off after we have  
4           reviewed the statements of this.

5                   THE WITNESS:        Yes.

6                                       - - -

7                   (Deposition concluded at 11:26 a.m.)

8                   (Signature not waived.)

9                   (See attached errata sheet.)

10                                      - - -

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1  
2 CERTIFICATE

3 State of Ohio, )  
4 ) SS:  
5 County of Cuyahoga.)

6 I, Diane M. Stevenson, a Registered Merit  
7 Reporter, Certified Realtime Reporter, and  
8 Notary Public in and for the state of Ohio,  
9 duly commissioned and qualified, do hereby  
10 certify that the within-named witness, THOMAS  
11 H. MCCOOL, was by me first duly sworn to  
12 testify the truth, the whole truth and nothing  
13 but the truth in the cause aforesaid; that the  
14 testimony then given by him was by me reduced  
15 to stenotypy in the presence of said witness,  
16 afterwards transcribed by means of  
17 computer-aided transcription, and that the  
18 foregoing is a true and correct transcript of  
19 the testimony as given by him as aforesaid.

20 I do further certify that this deposition  
21 was taken at the time and place in the  
22 foregoing caption specified, and was completed  
23 without adjournment.

24 I do further certify that I am not a  
25 relative, employee or attorney of any party, I  
am not, nor is the court reporting firm with  
which I am affiliated, under contract as  
defined in Civil Rule 28(D), or otherwise  
interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set  
my hand and affixed my seal of office at  
Cleveland, Ohio, on this 23rd day of February  
2012.

\_\_\_\_\_  
Diane M. Stevenson, RMR, CRR  
Notary Public in and for  
The State of Ohio.

My Commission expires December 9, 2015.

RE: THOMAS H. MCCOOL, ET AL. VS. NORFOLK SOUTHERN RAILWAY  
CORPORATION CASE NO. 3:11CV678  
DEPOSITION OF THOMAS H. MCCOOL

56

ERRATA SHEET

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\_\_\_\_\_ NO CHANGES

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_